

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

AUNDRAY RENARD BRADLEY,

Defendant-Appellant.

UNPUBLISHED

July 18, 2013

No. 309986

Oakland Circuit Court

LC No. 2011-238083-FC

Before: FORT HOOD, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of armed robbery, MCL 750.529. He was sentenced as a fourth habitual offender, MCL 769.12, to a prison term of 9 to 30 years. Defendant appeals by right. We affirm.

Defendant was convicted of robbing a cashier at a Lowe's store in Southfield. According to the cashier, defendant initially placed some items on the checkout counter as if he intended to pay for the items, but then announced a robbery and demanded the money in the cash register. The cashier testified that defendant stated that he had a gun, produced a hammer from beneath his shirt, and then left the store with the items that he had placed on the checkout counter.

Defendant first argues that he is entitled to a new trial because the trial court improperly denied his objection to the prosecutor's use of a peremptory challenge to excuse a black juror.

A prosecutor cannot use peremptory challenges to strike persons from a jury on the basis of their race. *Batson v Kentucky*, 476 US 79, 93; 106 S Ct 1712; 90 L Ed 2d 69 (1986); *People v Barker*, 179 Mich App 702, 705; 446 NW2d 549 (1989), aff'd 437 Mich 161 (1991). Whether a peremptory challenge has been improperly exercised in violation of *Batson* involves a three-step test:

First, there must be a prima facie showing of discrimination based on race. To establish a prima facie case of discrimination based on race, the opponent of the challenge must show that: (1) the defendant is a member of a cognizable racial group; (2) peremptory challenges are being exercised to exclude members of a certain racial group from the jury pool; and (3) the circumstances raise an inference that the exclusion was based on race. . . . [T]rial courts [are] to consider

all relevant circumstances in deciding whether a prima facie showing has been made.

Once the opponent of the challenge makes a prima facie showing, the burden shifts to the challenging party to come forward with a neutral explanation for the challenge. The neutral explanation must be related to the particular case being tried and must provide more than a general assertion in order to rebut the prima facie showing. If the challenging party fails to come forward with a neutral explanation, the challenge will be denied.

Finally, the trial court must decide whether the non-challenging party has carried the burden of establishing purposeful discrimination. . . . [T]he establishment of purposeful discrimination comes down to whether the trial court finds the . . . race-neutral explanations to be credible. . . . If the trial court finds that the reasons proffered were a pretext, the peremptory challenge will be denied. [*People v Bell*, 473 Mich 275, 282-283; 702 NW2d 128 (2005), amended 474 Mich 1201 (2005) (internal quotation marks and citations omitted).]

The applicable standard of review for a *Batson* objection depends on which of the three steps is in dispute. *People v Knight*, 473 Mich 324, 338; 701 NW2d 715 (2005). The first *Batson* step, which involves whether the opponent of the peremptory challenge has made out a prima facie case of discrimination, “is a mixed question of fact and law that is subject to both a clear error (factual) and a de novo (legal) standard of review.” *Id.* at 342. “A trial judge must first find the facts and then must decide whether those facts constitute a prima facie case of discrimination under *Batson* and its progeny.” *Id.* The second step, which involves whether the proponent of the peremptory challenge has provided a race-neutral explanation for the peremptory challenge, is reviewed de novo on appeal. *Id.* at 337, 343. The third step, which requires the trial court to determine whether the race-neutral explanation is a pretext and whether the opponent has proved purposeful discrimination, involves a question of fact that is reviewed for clear error. *Id.* at 337-338, 344-345.

The only fact found by the trial court, that the prosecutor had used a peremptory challenge against a black juror, is not clearly erroneous because the record indicates that the prosecutor excused a juror who is black. The trial court tacitly found that defendant had made a prima facie showing of discrimination because it required the prosecutor to provide a race-neutral explanation for the challenge. The prosecutor provided a race-neutral reason for excusing the juror. The prosecutor explained that despite the juror’s claim that he had not been arrested or charged with a crime, someone with the juror’s same name had recently been criminally prosecuted in the same circuit court. This created a concern that the juror was lying about his past and called his honesty in other responses into question, or that the juror was related to the person who was prosecuted and might be biased against the prosecutor because of the prosecution of his relative. Further inquiry into these matters could have been embarrassing for the juror and also created the potential for bias. The second step considers only whether the explanation is race-neutral and not how persuasive that explanation is. *Knight*, 473 Mich at 343-344. Thus, the trial court did not err in concluding that the prosecutor had provided a race-neutral explanation for exercising a peremptory challenge to excuse the juror. Defendant did not challenge the prosecutor’s race-neutral explanation for the challenge in the trial court and, while

he does so on appeal, he has not explained how he knows that the proffered explanation was false or offered any evidence that would warrant an evidentiary hearing on that point. Because there is nothing in the record to indicate that the prosecutor's explanation was not credible, the trial court did not clearly err in denying defendant's objection.

Defendant next argues that the evidence was insufficient to prove the armed element of armed robbery, and thus the trial court erred in denying his motion for a directed verdict. We disagree. Defendant's argument is predicated on case law interpreting the armed robbery statute before it was amended in 2004. Under the 2004 amendment, 2004 PA 128, the armed element can be established by evidence that the defendant represented "orally or otherwise that he or she is in possession of a dangerous weapon[.]" MCL 750.529. In this case, the store cashier testified that after he rang up defendant's merchandise, defendant stated, "Open the register, I got a gun." When the cashier failed to immediately react, defendant again stated, "Open the register, I've got a gun, I'm not kidding." The evidence that defendant represented that he was armed with a gun was sufficient to satisfy the armed element of armed robbery. Accordingly, the trial court did not err in denying defendant's motion for a directed verdict.¹

Affirmed.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause

¹ Defendant's statement of this issue also suggests that he is challenging the denial of a motion to quash. However, defendant does not address any motion to quash in the body of his brief, thereby abandoning that issue. *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004). Moreover, we note that there is no record of defendant having made such a motion in the trial court.